

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of DTE ELECTRIC)	
COMPANY for authority to increase its rates, amend)	
its rate schedules and rules governing the distribution)	Case No. U-18014
and supply of electric energy, and for)	
miscellaneous accounting authority.)	
_____)	

At the April 13, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER ON REHEARING

On February 1, 2016, DTE Electric Company (DTE Electric) filed an application requesting authority to increase its retail rates for the generation and distribution of electricity and other forms of regulatory relief.

On March 3, 2016, Administrative Law Judge Sharon L. Feldman (ALJ) conducted a prehearing conference, at which petitions to intervene filed by, among others, the DTE Residential Customer Group (RCG) and the Association of Businesses Advocating Tariff Equity (ABATE) were granted. The Commission Staff (Staff) also participated in the proceedings.

On January 31, 2017, the Commission issued an order (January 31 order) approving, *inter alia*, a rate increase of \$184.4 million, the company's proposed accounting treatment for Detroit City taxes from 2012 to 2014, and DTE Electric's proposal that no changes be made to its opt-out

tariff for customers electing not to have the company's advanced metering infrastructure (AMI) installed. The Commission also set forth certain requirements for filings to be included in the company's next general electric rate case.

On March 2, 2017, DTE Electric and the RCG filed petitions for rehearing. On March 23, 2017, DTE Electric and the Staff filed responses to the RCG's petition, and ABATE filed a response to DTE Electric's petition.

DTE Electric's Petition for Rehearing

DTE Electric requests that the Commission clarify or revise the directive contained in ordering paragraph H and in the discussion on page 85 of the January 31 order. Ordering paragraph H states:

In its next general rate case filing, DTE Electric Company shall provide a full analysis of salaries and wages and any incentive compensation, including both historical information and projected trends with changes expected due to workforce and process efficiencies, employee retirements, use of in-house employees versus contractors, and capital investments that could affect overall staffing levels; and shall provide a complete analysis of all historic test year compensation, demonstrating its relationship to market median, and a reconciliation of the historic test year compensation to the amount included in the projected test year, with an explanation for any variances.

According to DTE Electric, the ordering paragraph does not address confidential information, the filing of which may be necessary to comply with the January 31 order. DTE Electric points to Mich Admin Code, R 792.10406, which references the filing of confidential information in accordance with the e-dockets manual. However, according to DTE Electric, although the e-dockets manual explains the procedure for filing confidential information, it does not explain how this information is protected in an initial filing, before the entry of a protective order. DTE Electric maintains that filing without a protective order in place could make sensitive personal information about employee salaries, and proprietary information from market studies, subject to

disclosure under the Michigan Freedom of Information Act, MCL 15.231 *et seq.* (FOIA). At the same time, DTE Electric contends that if it does not file the required information with its initial rate application, there could be a claim that the company's filing was incomplete, thus delaying the resolution of the case. Accordingly, DTE Electric requests that the Commission either enter a protective order of the same general form that was used in this case to apply to the initial filings in the company's next rate case, or exempt any employee compensation-related information from disclosure under FOIA using the procedure under MCL 15.243(f), or the Commission should limit the information the company is required to submit as part of its initial filing to non-confidential information. In that case, additional information could be supplied through discovery after the entry of a protective order.

In response, ABATE argues that the Commission should deny DTE Electric's requests on grounds that the company's petition for rehearing "is grounded only in speculation and vague assertions regarding risks of unintended consequences[,]" contrary to the requirements of R 792.10437(1) (Rule 437), which mandates that a petitioner state with specificity the purported unintended consequences resulting from the order. ABATE's response, p. 3. In addition, ABATE contends that DTE Electric's request for a protective order is premature because the company has not met the Commission's requirements for demonstrating that a protective order is necessary or appropriate. Finally, ABATE points out that the Commission's directive does not appear to require that the company disclose information about individual employees as DTE Electric seems to believe.

The Commission finds that some minor clarification is appropriate. First, the Commission agrees with ABATE that with respect to the compensation analysis to be filed, there is no need for DTE Electric to provide employee-specific information; it is sufficient for the company to present

compensation levels by job category and number of employees at each compensation level. With respect to proprietary information contained in market studies, the Commission recommends that DTE Electric submit a motion for a protective order and a protective order with its initial filing. Once the protective order is in place, the company shall immediately provide the additional information as directed in the January 31 order. *See, e.g.,* Case No. U-16417, where Upper Peninsula Power Company followed that procedure.

DTE Residential Customer Group's Petition for Rehearing

The RCG first contends that the Commission should reconsider its determination that DTE Electric's amortization expense treatment of Detroit City taxes is appropriate. According to the RCG, "the inclusion in rates in this case for an increase in the City of Detroit income tax effective January 1, 2012, constitutes retroactive ratemaking, and is otherwise unlawful and unreasonable." RCG's petition for rehearing, p. 1. According to the RCG, DTE Electric is requesting recovery of amounts associated with this tax in addition to the amounts covered by the 1.6393% tax multiplier applied to the final revenue deficiency. According to the RCG, the tax multiplier is expected to provide sufficient revenue to cover federal, state, and local taxes; thus, DTE Electric is already recovering amounts for Detroit City taxes and its request for additional amounts is double counting. The RCG further asserts that the Commission failed to explain how the amortization of a tax increase in 2012 does not constitute retroactive ratemaking, even if the treatment is consistent with prior Commission orders.

In response, the Staff and DTE Electric argue that the RCG's request for rehearing should be denied on grounds that it does not comply with the standards under Rule 437. DTE Electric points out that the Commission has addressed, and rejected, the RCG's retroactive ratemaking argument repeatedly in previous cases. DTE Electric further contends that the RCG's claim that the

company is also recovering local tax expense through the revenue multiplier is incorrect, pointing to Exhibit A-10 Schedule C1 and Exhibit A-8 Schedule A1, which show that not all taxes are recovered through the revenue multiplier.

Next, the RCG requests that the Commission reconsider its findings and conclusions with respect to AMI issues, including opt-out charges. The RCG contends that the Commission's determination that opt-out charges were appropriate was based on Case No. U-17000, which was a proceeding that resulted in a "non-binding, non-precedential, order in a legislative comment proceeding." RCG's petition, p. 5. The RCG adds that the subsequent cases that approved opt-out charges relied on the same non-binding case and that therefore opt-out charges for AMI "rest on 'foundational quicksand[.]'" RCG's petition, p. 6. The RCG further claims that evidence and arguments concerning health, safety, and privacy issues associated with AMI have never been fully litigated, and that the Commission's reliance on a Court of Appeals decision approving opt-out charges for DTE Electric customers was improper because the decision was unpublished.

The Staff and DTE Electric argue that the RCG's request for rehearing on this issue should be rejected, again on grounds that the claims that the RCG raises have been repeatedly addressed in this rate case and in proceedings involving other utility AMI programs.

The Commission agrees with the Staff and DTE Electric that the RCG's petition for rehearing on the Detroit City tax and AMI issues does not meet the standards for rehearing under Rule 437. The RCG has not pointed to any new evidence, legal or factual errors, or circumstances that arose after the close of the record that merit rehearing. Moreover, the RCG's petition is replete with arguments raised in this proceeding, which are the same arguments that the Commission has

addressed in prior proceedings.¹ As the Commission has repeatedly stated, “[A]n application for rehearing is not merely another opportunity to argue a position or to express disagreement with the Commission’s decision.” August 1, 2005 order in Case No. U-13917 and December 18, 2003 order in Case No. U-13350. Accordingly, the RCG’s petition for rehearing is denied.

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing filed by the DTE Residential Customer Group is denied.

B. DTE Electric Company may file a protective order with its application in its next electric rate case to cover confidential or commercially sensitive material. The company shall submit the confidential material once the protective order is approved.

¹ The RCG’s argument concerning double counting of the Detroit City tax was first raised in the RCG’s initial brief, with no citation to testimony, and is repeated in more detail in its petition for rehearing. While the January 31 order did not explicitly address this, the Commission nevertheless finds that the RCG’s argument is misplaced. The Commission has historically accepted the establishment of income tax regulatory assets or liabilities for the impacts of the re-measurement of deferred taxes due to tax law changes, and the related amortization of these regulatory assets or liabilities.

Because the Detroit tax rate increased from 1% to 2%, the company re-measured deferred taxes related to the City of Detroit. The corresponding increase in deferred taxes, (booked as a regulatory asset) captured the period between January 1, 2012, and the first rate case following the change. Thus, there is no double counting of the increased tax expense. And, like any other expense, the corresponding yearly amortization of approximately \$500,000 is grossed up from an income deficiency to a revenue deficiency through the revenue multiplier. On a going forward basis, the revenue multiplier incorporates the 2% Detroit tax rate.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of April 13, 2017.

Kavita Kale, Executive Secretary